

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 FREMONT STREET, 21ST FLOOR
SAN FRANCISCO, CALIFORNIA 94105**

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PROPOSED TEXT

**CALIFORNIA CODE OF REGULATIONS, TITLE 10
CHAPTER 5, SUBCHAPTER 1**

AMENDS ARTICLE 7. TO READ:

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ARTICLE 7. PRODUCTION AGENCY RECORDS

Section 2190. Authority and Purpose

These regulations are promulgated pursuant to the authority granted the Commissioner under the provisions of Sections 1727, 1763, and 1768 of the Insurance Code. They shall apply to every agent or broker or surplus line broker or special lines' surplus lines broker licensed by the Commissioner. Surplus lines brokers and special lines' surplus lines brokers shall be subject to these regulations to the same extent and in the same manner as agents and brokers.

§2190.05. Definitions.

- (a) The term “agent,” as used in these regulations, means an insurance agent as defined in Insurance Code Section 1621.
- (b) The term “broker” means an insurance broker as defined in Insurance Code Section 1623.
- (c) The term “copy” as used in these regulations means any reproduction by which a reasonably clear image of the form, report or statement is provided, including the image of the executing broker's signature, including but not limited to a photocopy, facsimile transmission copy, and any other electronically transmitted digital reproduction.
- (d) The term “secondary office” means an office of a resident agent or broker or surplus lines broker or special lines' surplus lines broker other than the principal office.
- (e) The term “special lines' surplus lines broker” means a person licensed under Insurance Code Section 1760.5 and authorized to do business pursuant to Division 1, Part 2, Chapter 6 Sections 1760.5 through 1780.

(f) The term “surplus line broker” means a person licensed under Insurance Code Section 1765 and authorized to do business pursuant to Division 1, Part 2, Chapter 6 Sections 1760 through 1780.

(g) The term “resident surplus line broker” means a person licensed as a California resident under Insurance Code Section 1765 and authorized to do business pursuant to Division 1, Part 2, Chapter 6 Sections 1760 through 1780.

(h) The term “resident special lines' surplus lines broker” means a person licensed as a California resident under Insurance Code Section 1760.5 and authorized to do business pursuant to Division 1, Part 2, Chapter 6 Sections 1760.5 through 1780.

(i) The term “non-resident surplus line broker” means a person licensed as a resident surplus line broker in a state other than California and who is licensed as a non-resident in California under Insurance Code Section 1765 and authorized to do business pursuant to Division 1, Part 2, Chapter 6 Sections 1760 through 1780.

(j) The term “non-resident special lines' surplus lines broker” means a person licensed as a resident special lines' surplus line broker in a state other than California and who is licensed as a non-resident in California under Insurance Code Section 1760.5 and authorized to do business pursuant to Division 1, Part 2, Chapter 6 Sections 1760.5 through 1780.

NOTE

Authority cited: Sections 1727, 1763 and 1768, Insurance Code. Reference: Sections 1621, 1623, 1727 and 1760-1780, Insurance Code.

§2190.1. General.

(a) All record-keeping systems, whether manual or mechanical, must provide an audit trail so that details underlying the summary data, such as invoices, checks, and statements, may be identified and made available on request. All such systems must provide the means to trace any transaction back to its original source or forward to final entry, such as is accomplished by a conventional double-entry bookkeeping system. When automatic data processing systems are used, a description of the system must be available for review by the Department.

This description must contain statements and illustrations sufficiently detailed to indicate the application or process being performed, the procedures employed in each application or process (such as flow charts, block diagrams or other satisfactory descriptions of input or output procedures) and the controls used to insure accurate and reliable processing.

(b) All record-keeping systems, including automatic data processing systems and computer output microfilms, must be designed and programmed to produce the required information in an intelligible form. Identification of coding systems shall be readily available whenever they are

used to record and maintain any of the information required under Sections 2190.2, 2190.3 and 2190.4.

NOTE

Authority cited: Sections 1727, 1763 and 1768, Insurance Code. Reference: Sections 1727, 1763 and 1768, Insurance Code.

§2190.2. Required Records.

Wherever applicable, the following records shall be maintained by every agent or broker or surplus lines broker or special lines' surplus lines broker with respect to each and every insurance transaction for at least five years after expiration or cancellation date of the policy to which the records pertain:

- (a) Name of insured,
- (b) Name of insurer,
- (c) Policy number,
- (d) Effective date, termination date and mid-term cancellation date of coverage,
- (e) Amount of gross premium,
- (f) Amount of net premium,
- (g) Amount of commission and basis on which computed,
- (h) Names of persons who receive, or are promised, any commissions or other valuable consideration related to the transaction,
- (i) Amount of premium received including itemization of any partial payments or additional premium,
- (j) Date premium received by agent or broker,
- (k) Date deposited in bank account or bank depository into which premiums are deposited or maintained in accord with Section 1733 of the Insurance Code, including but not limited to trustee accounts maintained pursuant to Section 1734 of the Insurance Code,
- (l) Name and address of bank and number of account in which premium is deposited or maintained in accord with Section 1733 of the Insurance Code, including but not limited to trustee accounts maintained pursuant to Section 1734 of the Insurance Code,
- (m) Date premium paid by agent or broker to the person entitled thereto and identification of the

means of transmittal,

(n) Amount of net and gross return premium,

(o) Date return premium is received from insurer by agent or broker which may be the date the credit is taken from the insurer or the date the check or draft is received, and

(p) Date gross return premium is remitted to person entitled thereto by agent or broker and identification of means of transmittal.

NOTE

Authority cited: Sections 1727, 1763 and 1768, Insurance Code. Reference: Sections 1727, 1733, 1734, 1763 and 1768, Insurance Code.

§2190.3. Records by File.

(a) Wherever applicable, the following records shall be maintained by every agent or broker and surplus lines broker and special lines' surplus lines broker in a file pertaining to a particular insured for a period of eighteen months after the transaction described by such records:

(1) Identity of each person who transacted the insurance, renewals and any change in coverage,

(2) Records of all binders, whether written or oral, showing the names of insured and insurer, nature of coverage, effective and termination dates and premium for binder or policy to be issued,

(3) Copy of application or memorandum of request for insurance,

(4) Correspondence received, copies of correspondence sent, memoranda, notes of conversation, or any other record necessary to describe the transaction.

(b) The following records of surplus line transactions shall be maintained by every agent and broker and surplus lines broker and special lines' surplus lines broker for a period of at least five years after expiration or cancellation date of the policy to which the records pertain: forms, reports or statements required to be maintained or filed under Sections 1763 and 1764.1 of the Insurance Code.

(c) The agent, broker, surplus line broker or special lines' surplus lines broker who signs the form, report or statement under Insurance Code Section 1763 shall maintain the original. The agent, broker, surplus lines broker or special lines' surplus lines broker who receives the originally signed disclosure statement under Insurance Code Section 1764.1 shall maintain the original.

(d) The agent, broker, surplus line broker or special lines' surplus lines broker who signs the diligent search form under Insurance Code Section 1763 or receives the originally signed disclosure statement under Insurance Code Section 1764.1 shall send copies to all other agents,

brokers, surplus lines brokers or special lines' surplus lines brokers involved in the transaction.

(e) The agent, broker, surplus line broker, or special lines' surplus lines broker who receives copies of documents pursuant to 2190.3(d), shall maintain the copies which show the signature of the agent, broker, surplus lines broker, special lines' surplus lines broker or applicant who signed it.

NOTE

Authority cited: Sections 1727, 1763 and 1768, Insurance Code. Reference: Sections 1760.5(b), 1763 and 1764.1, Insurance Code.

§2190.4. Direct Billing.

(a) With respect to any business transacted on a direct billing basis, the following records may be maintained in lieu of the records required by Section 2190.2:

- (1) A policy record card or sheet or declaration page,
- (2) Copies of premium payment receipts or other memoranda thereof for premiums collected when collected by the agent or broker,
- (3) Records of premium payments made by the agent or broker,
- (4) Copies of memoranda of any additional or return premium received by the agent or broker,
- (5) Monthly or other periodic statements from the insurer showing premium receipts on the agent's or broker's business, and
- (6) Copy of any cancellation notice, or letter of cancellation notice, or letter of cancellation for cause.

(b) All records specified in Section 2190.4(a)(1), (a)(2), (a)(3), (a)(4) and (a)(6) shall be maintained for at least five years after expiration or cancellation date of the policy.

NOTE

Authority cited: Sections 1727, 1763 and 1768, Insurance Code. Reference: Sections 1727, 1763 and 1768, Insurance Code.

§2190.5. Bank Records.

(a) The following bank records shall be maintained at all times:

(1) Periodic statements of account supplied by the bank for all accounts or depositories into which premiums are deposited or maintained in accord with 1733 of the Insurance Code,

including but not limited to trustee accounts maintained pursuant to Section 1734 of the Insurance Code.

(2) Records of all deposits made into such accounts or depositories into which premiums are deposited or maintained in accord with Section 1733 of the Insurance Code, including but not limited to trustee accounts maintained pursuant to Section 1734 of the Insurance Code.

(3) Cancelled checks drawn on, or records of withdrawal of funds from, such accounts or depositories into which premiums are deposited or maintained in accord with Section 1733 of the Insurance Code, including but not limited to trustee accounts maintained pursuant to Section 1734 of the Insurance Code.

(b) Nothing in this section is intended to abrogate the provisions of Insurance Code Section 1734 and 1734.5.

NOTE

Authority cited: Sections 1727, 1763 and 1768, Insurance Code. Reference: Sections 1733, 1734 and 1734.5, Insurance Code.

§2190.6. Interest Bearing Accounts.

Whenever a principal has authorized an agent or broker or surplus lines broker or special lines' surplus lines broker to maintain funds received in a fiduciary capacity, as defined in Sections 1733 and 1734 of the Insurance Code, in an interest bearing account and to retain interest earned (i.e., savings account or certificate of deposit), such authorization shall be in writing and the original thereof shall at all times be maintained as part of the pertinent records of the agent or broker and shall be readily available on request, for so long as fiduciary funds are so maintained for such insurer.

NOTE

Authority cited: Sections 1727, 1763 and 1768, Insurance Code. Reference: Sections 1733 and 1734, Insurance Code.

§2190.7. Place Where Records Kept.

(a) All records described in Sections 2190.2, 2190.4, 2190.5 and 2190.6 shall be kept in the principal office in this State of the resident agent or broker or **resident** surplus lines broker or **resident** special lines' surplus broker except where otherwise specifically authorized by the commissioner. **All records described in Sections 2190.2, 2190.4, 2190.5 and 2190.6 for non-resident surplus line brokers and non-resident special lines' surplus line broker shall be kept in the principal office in the state or territory of the United States in which he or she is licensed as a resident surplus line broker or resident special lines' surplus line broker.**

(b) All records described by Section 2190.3 shall be maintained at the office servicing the insured.

(c) An agent operating under an exclusive contract with an insurer, including one insurer and its subsidiaries or affiliates, shall, upon termination of the appointment, be required to maintain only such records as such contract authorizes him to retain, provided that the insurer shall bear the responsibility of maintaining within this State all other records which would have otherwise been required to be maintained by the agent, subject to the time limitations set forth in 2190.2, 2190.3 and 2190.4.

(d) All records shall be maintained in an orderly manner so that the information therein is readily available and shall be open to inspection or examination of the commissioner at all times and the commissioner may at any time require such licensee to furnish him any information maintained or required to be maintained.

(e) One year after cancellation or expiration of a policy, records pertaining thereto may be stored off premises so long as they are retrievable within two business days.

(f) An agent or broker may maintain the records, which are otherwise required by this article to be kept at the principal office, at a secondary office upon obtaining specific written authorization from the Insurance Commissioner, which authorization may impose any conditions or restrictions which the Insurance Commissioner deems to be necessary and proper.

NOTE

Authority cited: Sections 1727, 1763 and 1768, Insurance Code. Reference: Sections 1727, 1763 and 1768, Insurance Code.

§2190.8. Retention Period.

HISTORY

1. Amendment filed 6-27-78; designated effective 9-1-78 (Register 78, No. 26).
2. Repealer filed 8-28-98; operative 9-27-98 (Register 98, No. 35).